

**BRADLEY COOPER**  
Claimant

**EXIDE CORPORATION**  
Respondent

**HOME INDEMNITY COMPANY**  
Insurance Carrier

## ORDER

## ISSUES

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant injured his ankle on November 23, 1993 when he drove a forklift into another parked forklift. Following the accident he was taken to the emergency room where a drug test was performed. The drug test showed positive and it was stipulated the test was valid according to the requirements of K.S.A. 44-501(d)(2).

This appeal is from the second order denying preliminary benefits. At the first preliminary hearing the only evidence suggesting that marijuana contributed to the accident was a statement in Dr. Peterson's letter indicating ". . . the drug could have been a factor in the accident." On the basis of that evidence the Administrative Law Judge denied benefits at the first preliminary hearing. On appeal the Appeals Board reversed, finding the evidence insufficient to meet respondent's burden.

Respondent has now provided additional history to Dr. Peterson and Dr. Peterson has now stated his opinion that the marijuana probably or most likely did contribute to the accident. Dr. Peterson's testimony provides quite weak support for this conclusion. He testifies he does not know what is a high, low or medium level for the testing done. The history he was given by respondent's attorney appears initially flawed in that it states the conclusion. Nevertheless, Dr. Peterson states his opinion that the use of marijuana may effect motor skills for a substantial period of time. The evidence relating to the accident itself also gives reason to question why the claimant would not have otherwise had full opportunity to stop in time to avoid the accident when, from his own testimony, he was traveling at a very slow rate of speed. Upon a review of the record as a whole the Appeals Board finds that, because Dr. Peterson's testimony at this point is uncontroverted and not so lacking credibility as to be disregarded, the respondent has met its burden.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Preliminary Order of Administrative Law Judge George R. Robertson dated April 3, 1995 should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July, 1995.

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BOARD MEMBER

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**DISSENT**

I disagree with the majority opinion of the Board. Without question, Dr. Peterson's opinion is without foundation and purely speculative. Therefore, the respondent and insurance carrier have failed to sustain their burden of proof of the defense that marijuana contributed to the injury.

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BOARD MEMBER

c: Brian D. Pistotnik, Wichita, Kansas  
John W. Mize, Salina, Kansas  
George R. Robertson, Administrative Law Judge

**BRADLEY COOPER**

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**DOCKET NO. 184,696**

David A. Shufelt, Acting Director